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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,984	02/18/2004	Raymond J. Baxter	11694/04304 (03-002)	3041
27483 7590 06/12/2008 CALFEE, HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114				
EXAMINER				
LEUNG, PHILIP H				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
06/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,984

Applicant(s)

BAXTER ET AL.

Examiner

PHILIP H. LEUNG

Art Unit

3742

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 19, 27, 36 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 19, 27, 36 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's election without traverse of claims 1-10, 19, 27, 36 and 44 in the reply filed on 3-24-2008 is acknowledged. All the non-elected claims have been cancelled.

2. The drawings filed on 2-18-2004 are acceptable.

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10, 19 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are considered incomplete as there is no element in the claimed structure related to and perform the function of "magnetic separator" as recited at the beginning of the claims. Clarification and correction are required.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(c), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being obvious over Sprenger et al (US 5,529,703) (cited by the applicant), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376).

Sprenger shows a magnetic separator having every feature except for the showing of that the inlet opening of said passage being adapted to admit and align any misaligned workpieces moving into said inlet opening of said passage. Perseke shows that it is well known in the art of conveyor system to use a funnel shape device 59 at the inlet opening of the conveyor 1 for aligning the loading of the objects 19 onto the transport system 21 (see Figures 1-9 and paragraphs [0052] – [0059]). Ide also shows a cargo transport system for moving cargo loads 13 with power conveyors 21 having upright guides 78 acting as funnel to align the loads in the direction of travel (see Figures 1 and 2 and col. 6, lines 25-40). It would have been obvious to an ordinary skill in the art at the time of invention to modify Sprenger to use a funnel shape inlet opening of the workpiece passage so that the workpieces are properly aligned to be moved in a predetermined order for further processing to achieve desired results, in view of the teaching of Perseke or Ide.

7. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being obvious over Sprenger et al (US 5,529,703) (cited by the applicant), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376), as applied to claims 1-6 above, and further in view of Alden et al (US 5,180,898).

Sprenger combined with Perseke or Ide shows a magnetic separator having every feature except for the showing of the use of a view port. Alden shows a conveyor device for continuously moving objects through a processing system having a window 22 on the side of a guide wall of the conveyor device to monitor the condition of the objects (see Figures 1 and 2 and col. 1, lines 3-13). It would have been obvious to an ordinary skill in the art at the time of invention to modify Sprenger combined with Perseke or Ide to use a view port on the side of the transport guide wall in order to monitor the conditions of the workpiece to ensure the workpieces are properly aligned to achieve desired processing results, in view of the teaching of Alden.

8. Claims 8-10, 27, 36 and 44 are rejected under 35 U.S.C. 103(a) as being obvious over Sprenger et al (US 5,529,703), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376), as applied to claims 1-6 above, and further in view of Lamberty (US 3,604,611) or Wallington (US 3,769,135).

Sprenger combined with Perseke or Ide shows a magnetic separator having every feature except for the showing of an adjustment device for adjusting the vertical position of the upper guide plate. Lamberty of Wallington shows that it is well known in the art of transport systems for moving plural objects on a conveyor to use a device for varying the distance between the upper and lower object guiding assemblies so that objects of different sizes can be transported (see Lamberty, Figures 1-3 and col. 3, line 10-69 and Wallington, see Figures 1-4 and col. 1, line

66 - col. 3, line 51). It would have been obvious to an ordinary skill in the art at the time of invention to modify Sprenger combined with Perseke or Ide to use an adjustment mechanism to vary the distance between the upper and lower guides so that the system can accommodate different size of objects for a more versatile system, in view of the teaching of Lamberty or Wallington. The exact arrangement of the adjusting mechanism would have been a matter of engineering expediencies depending on the overall system.

9. Claims 1-6, as far as the claims are understood and proper, are further rejected under 35 U.S.C. 103(a) as being obvious over Mohr (US 4,272,313), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376).

As far as the claims are understood and proper, the broadly worded claims only recite a transport system and have nothing to do with "a magnetic separator". Mohr shows a transport device comprising an upper guide plate 80 and a lower guide plate 74 that define a passage for workpieces moving through the device; said guide plates having respective inlet end portions that define an inlet opening (at the arrow shown in Figure 1) for said passage and having respective outlet end portions that define an outlet opening the other end of the transport at the right side of Figure 1) for said passage (see Figure 1 and col. 3, lines 37-47). Therefore it shows every feature except for the showing of that the inlet opening of said passage being adapted to admit and align any misaligned workpieces moving into said inlet opening of said passage. Perseke shows that it is well known in the art of conveyor system to use a funnel shape device 59 at the inlet opening of the conveyor 1 for aligning the loading of the objects 19 onto the transport system 21 (see Figures 1-9 and paragraphs [0052] – [0059]). Ide also shows a cargo transport

system for moving cargo loads 13 with power conveyors 21 having upright guides 78 acting as funnel to align the loads in the direction of travel (see Figures 1 and 2 and col. 6, lines 25-40). It would have been obvious to an ordinary skill in the art at the time of invention to modify Mohr to use a funnel shape inlet opening of the workpiece passage so that the workpieces are properly aligned to be moved in a predetermined order for further processing to achieve desired results, in view of the teaching of Perseke or Ide.

10. Claims 7 and 19, as far as the claims are understood and proper, are further rejected under 35 U.S.C. 103(a) as being obvious over Mohr (US 4,272,313), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376), as applied to claims 1-6 above, and further in view of Alden et al (US 5,180,898).

Mohr combined with Perseke or Ide shows a magnetic separator having every feature except for the showing of the use of a view port. Alden shows a conveyor device for continuously moving objects through a processing system having a window 22 on the side of a guide wall of the conveyor device to monitor the condition of the objects (see Figures 1 and 2 and col. 1, lines 3-13). It would have been obvious to an ordinary skill in the art at the time of invention to modify Mohr combined with Perseke or Ide to use a view port on the side of the transport guide wall in order to monitor the conditions of the workpiece to ensure the workpieces are properly aligned to achieve desired processing results, in view of the teaching of Alden.

11. Claims 8-10 and 27, as far as the claims are understood and proper, are further rejected under 35 U.S.C. 103(a) as being obvious over Mohr (US 4,272,313), in view of Perseke et al (US 2001/0004999) or Ide (US 4,036,376), as applied to claims 1-6 above, and further in view of Lamberty (US 3,604,611) or Wallington (US 3,769,135).

Mohr combined with Perseke or Ide shows a magnetic separator having every feature except for the showing of an adjustment device for adjusting the vertical position of the upper guide plate. Lamberty or Wallington shows that it is well known in the art of transport systems for moving plural objects on a conveyor to use a device for varying the distance between the upper and lower object guiding assemblies so that objects of different sizes can be transported (see Lamberty, Figures 1-3 and col. 3, line 10-69 and Wallington, see Figures 1-4 and col. 1, line 66 - col. 3, line 51). It would have been obvious to an ordinary skill in the art at the time of invention to modify Mohr combined with Perseke or Ide to use an adjustment mechanism to vary the distance between the upper and lower guides so that the system can accommodate different size of objects for a more versatile system, in view of the teaching of Lamberty or Wallington. The exact arrangement of the adjusting mechanism would have been a matter of engineering expediencies depending on the overall system.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H. Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Philip H Leung/

Primary Examiner, Art Unit 3742

P.Leung/pl

6-6-2008